K164

R

<<<<.>>>>
[redacted]

PAGE 01 BUENOS 08638 161935Z
ACTION ARA-14

INFO OCT-01 ISO-00 HA-05 SSO-00 NSCE-00 USIE-00 INRE-00
CIAE-00 DODE-00 PM-05 H-01 INR-07 L-03 NSAE-00
PA-01 PRS-01 SP-02 SS-15 AID-05 /060 W
012655 162002Z /44

O 161730Z NOV 77
FM AMEMBASSY BUENOS AIRES
TO SECSTATE WASHDC IMMEDIATE 3235

[redacted] BUENOS AIRES 8638

E.O. 11652: GDS
TAGS: SHUM, AR
SUBJECT: DETENTION OF JACOBO TIMERMAN; A NEW LEGAL TWIST

REF: BUENOS AIRES 8639

SUMMARY: THE DECISION BY THE MILITARY JUNTA PLACING JACOBO TIMERMAN UNDER THE ACT OF INSTITUTIONAL RESPONSIBILITY APPEARS TO BE AN ACTION DESIGNED TO CONTINUE TIMERMAN'S INCARCERATION. TIMERMAN'S LAWYER BELIEVES THAT THE JUNTA'S DECISION WAS DESIGNED TO AVOID A FAVORABLE HABEAS CORPUS DECISION ON BEHALF OF THE EX-PUBLISHER. TIMERMAN HAS WRITTEN EMBOFF, HOWEVER, EXPRESSING OPINION THAT GOVERNMENT ACTION IS AIMED PRIMARILY AT EMBARGOING HIS PROPERTY AND STATING HIS HOPE THAT HE WILL BE SET FREE. END SUMMARY.

1. BACKGROUND -----
THE LEGAL PROCEEDINGS TAKEN SO FAR IN THE TIMERMAN CASE HAVE COVERED A RANGE OF CHARGES:

-- APRIL 18, 1977: GENERAL SUAREZ MASON ISSUED A PRESS STATEMENT ACCUSING THE ARRESTED TIMERMAN OF SUBVERSIVE ACTIVITIES.

-APRIL 23, 1977: MINISTRY OF THE INTERIOR COMMUNIQUE
[redacted]
[redacted]

ARGENTINA PROJECT (S20000044)
U.S. DEPT. OF STATE, A/RPS/IPS
Margaret P. Grafeld, Director
(X) Release () Excise () Deny
Exemption(s): _____
Declassify: () In Part (X) In Full
() Classify as ___ () Extend as ___ () Downgrade to ___
Date _____ Declassify on _____ Reason _____

CHARGED TIMERMAN WITH ECONOMIC CRIMES.

-APRIL 28, 1977: PEN DECREE ISSUED BY MININT HARGUINDEGUY STATING THAT MR. TIMERMAN'S/WAS INCOMPATIBLE WITH THE PUBLIC SAFETY.

-LAT SPRING, 1977: ARMY ANNOUNCED THAT TIMERMAN WAS BEING INVESTIGATED BY SECOND SPECIAL MILITARY COURT FOR SUBVERSION AND LINKS WITH GRAVIER GROUP.

-SEPTEMBER, 1977: SECOND SPECIAL MILITARY COURT CLEARED TIMERMAN OF ANY INVOLVEMENT IN SUBVERSIVE ACTIVITIES.

-LATE OCTOBER, 1977: APPEALS COURT ASKED MININT FOR REASONS FOR TIMERMAN'S CONTINUED DETENTION.

-NOVEMBER 1, 1977: PRESS RELEASE ISSUED BY MINISTRY OF THE INTERIOR ANNOUNCED THAT TIMERMAN HAD BEEN PLACED UNDER ACT OF INSTITUTIONAL RESPONSIBILITY.

2. TIMERMAN'S LEGAL SITUATION -----
FROM A LEGAL STANDPOINT, THE TIMERMAN CASE IS UNIQUE. SO FAR AS HIS LAWYER KNOWS, IT IS THE ONLY CASE OF THE THOUSANDS OF HABEAS CORPUS PETITIONS PENDING IN THE ARGENTINE COURTS IN WHICH THE PLANTIFF HAS BEEN FOUND NOT TO BE INVOLVED WITH SUBVERSION BY A COMPETENT MILITARY TRIBUNAL. IN ADDITION, ARGENTINE COURTS HAVE BEGUN TO CONSTITUTIONALLY LIMIT THE EXECUTIVE'S STATE OF SIEGE DETENTION POWERS. FOR EXAMPLE, AN ARGENTINE FEDERAL DISTRICT COURT LAST MONTH ORDERED THE IMMEDIATE RELEASE OF A SUGAR DEALER HELD UNDER EXECUTIVE DETENTION ON PURELY ECONOMIC CHARGES. EARLIER DECISIONS OF THE COURT OF APPEALS AND THE SUPREME COURT IN THE ZAMORANO CASE REAFFIRMED THE PRINCIPLE THAT THE EXECUTIVE'S [redacted]

[redacted]

PAGE 03 BUENOS 08638 161935Z

STATE OF SIEGE DETENTION POWER IS NOT DISCRETIONARY, BUT MUST BE EXERCISED REASONABLY ON THE BASIS OF RELEVANT EVIDENCE AGAINST THE DETAINEE. ACCORDING TO TIMERMAN'S ATTORNEY, WITH THIS BACKGROUND, THERE WAS A SIGNIFICANT CHANCE THAT THE FEDERAL COURT OF APPEALS (THE MOST PROGRESSIVE COURT IN THE COUNTRY) WOULD HAVE ORDERED TIMERMAN'S RELEASE FROM EXECUTIVE DETENTION WITHIN THE NEXT SEVERAL WEEKS, AS THE GOVERNMENT COULD NOT

SUCCESSFULLY REPLY TO THE COURT'S INQUIRIES OF LATE OCTOBER ASKING FOR THE GOVERNMENT'S CHARGES AGAINST TIMERMAN. TIMERMAN'S LAWYER BELIEVES THAT TO AVOID A SERIOUES (AND PERHAPS LOSING) LEGAL CLASH, THE JUNTA DECIDED TO TAKE EXTREME ACTION AND PLACE HIM UNDER THE ACT OF INSTITUTIONAL RESPONSIBILITY.

3. ACT OF INSTITUTIONAL RESPONSIBILITY ----- THE INSTITUTIONAL ACT IS VIEWED BY LIBERAL JURIS HERE AS A REVOLUTIONARY EQUIVALENT TO A COMMON LAW BILL OF PAINS AND PENALTIES WHICH THE JUNTA HAS ADOPTED UNDER ITS EMERGENCY POWERS TO PUNISH PERSONS SUPPOSED TO BE GUILTY OF SERIOUS CRIMES WITHOUT JUDICIAL PROCEEDINGS. A SIMILAR ACT PASSED BY A PREVIOUS MILITARY GOVERNMENT WAS UPHELD BY THE ARGENTINE SUPREME COURT.

4. ARTICLE 1 OF THE ACT LISTS A NUMBER OF VAGUE PUNISHABLE ACTS SUCH AS TOLERANCE OR NEGLIEGENCE OF ADMINISTRATIVE CORRUPTION, FAILURE TO OBSERVE BASIC MORAL PRINCIPLES IN THE EXERCISE OF PUBLIC FUNCTIONS, SERIOUS NEGLIGENCE IN THE EXERCISE OF PUBLIC FUNCTIONS. ARTICLE 2 SETS FORTH PUNISHMENTS WHICH MAY BE APPLIED TO PERSONS FOUND BY THE JUNTA TO HAVE VIOLATED ARTICLE ONE, AMONG WHICH ARE THE LOSS OF POLITICAL RIGHTS, THE LOSS OF CITIZENSHIP AND/OR THE EXPULSION OF NATURLIZED CITIZENS, INTERMENT IN A PLACE DECIDED BY THE EXECUTIVE AND THE PROHIBITION AGAINST THE PERSON'S DISPOSING OF HIS GOODS UNTIL THEIR LEGITIMATE ACQUISITION HAS BEEN PROVISION.

[redacted]

[redacted]

PAGE 04 BUENOS 08638 161935Z

5. THE JUNTA MUST CHOOSE WHICH OF THE ACT'S PENALTIES TO APPLY IN EACH CASE. DESPITE SPECULATION IN THE LOCAL PRESS, TIMERMAN HAS NOT BEEN INFORMED WHAT SPECIFIC ACTIONS THE JUNTA WILL TAKE. THE JUNTA TAILORS PENALTIES TO INDIVIDUALS CASES. FOR EXAMPLE, TWO OF THE 48 PERSONS UNDER THE ACT HAVE NOT BEEN DETAINED, ONLY THEIR GOODS HAVE BEEN EMBARGOED. RECENTLY THE JUNTA ESTABLISHED LEGAL PROCEDURES AND A BOARD TO LEGITIMIZE GOODS EMBARGOED UNDER THE INSTITUTIONAL ACT. HOWEVER, TO OUR KNOWLEDGE THERE IS NO TIME LIMIT OR REVIEW MECHANISM FOR THE OTHER CATEGORIES OF PUNISHMENT INCLUDED IN THE ACT (SUCH AS LOSS OF CIVIL RIGHTS).

6. USIS PRESS OFFICER HAS RECEIVED LETTER DATED NOVEMBER 15 FROM JACOBO TIMERMAN EXPRESSING OPINION THAT THE RECENT

GOVERNMENT ACTION IS INTENDED ONLY TO PLACE AN EMBARGO ON HIS PROPERTY, BUT DOES NOT PRECLUDE HIS BEING PLACED AT LIBERTY. (SEE SEPTEL) UNTIL RECEIPT OF THIS LETTER, THE VIEW WE RECEIVED FROM THE TIMERMAN FAMILY WAS JUST THE OPPOSITE, I.E. THAT THE ACTION WAS DESIGNED TO CONTINUE HIS INCARCERATION INDEFINITELY. OUR REQUEST FOR AN EXPLANATION FROM THE FOREIGN MINISTRY SO FAR HAS BEEN MET WITH VAGUE, PRO FORMA ANSWERS THAT THE ACTION IS REASONABLE AND LEGITIMATE UNDER REVOLUTIONARY JUNTA PROCEDURES. WE ARE PRESSING THE MINISTRY FOR FURTHER CLARIFICATION.

7. WE UNDERSTAND THAT AN AIDE TO ADMIRAL MASSERA CONTACTED TIMERMAN FAMILY ON NOVEMBER 11 AND CLAIMED THAT ADMIRAL MASSERA HAD OPPOSED THE JUNTA'S TIMERMAN DECISION BUT HAD BEEN OUT-VOTED. WHETHER THIS IS ANYTHING MORE THAN A TYPICAL MASSERA PLOY, WE DO NOT KNOW.
CASTRO

[redacted]

NNN